

PRESENTATION: SRI LANKA

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I thank Asian Human Rights Commission (AHRC) and Rehabilitation and Research Centre for Torture Victims (RCT) for hosting this event, I am very glad to be here. I confess from the outset I am not a specialist on the topic, so I will endeavour to make more political comments on the issue. You are all aware of the documentation available, so I would like you all to participate in commenting later on points I will raise in this presentation.

Can you have bad government in a torture-free society? This is a question raised by Basil in an issue of TORTURE which discusses what went wrong in Sri Lanka. In 1948, Sri Lanka gained independence. The country went on to become a Republic in 1972. In 1978, what we had was essentially a presidential system of government and a proportionally represented parliament. This was akin to the French system, except without the checks and balances. The President is completely immune – this is at the root of a lot of problems in Sri Lanka at the moment. The 18th Amendment effectively overturned separation of powers (between judiciary, legislative and executive). The Constitutional Council was composed of opposition representatives, the President and a few other "independents"; this gave the Council a sense of independence and impartiality. However, our present President enhanced the already powerful presidency even further by allocating himself the right over all appointments to government and by abolishing the term limit on presidency. Sri Lanka is therefore now considered a one-party authoritarian state.

I am personally from a banking background. I was Chief Executive of the country's Development Bank and am relatively new to politics. What I wish to share is a broad understanding of the political landscape of Sri Lanka:

1. The authoritarian slide – people gravitate towards power, where benefits are. Half my party (we are the opposition) defected to the current President's party to benefit from being allied with those in power.
2. 1978 Constitution
3. 17th & 18th Amendments
4. Separation of powers
5. Nationalism and Internationalism – military conflict of 26 years ended (significantly reduced killings in northeast). Majoritarianism will mean isolation from traditional allies in international community (e.g. Britain because of the country's colonial past, and the United States). There is mounting sensitivity concerning relations with India. The UN General Assembly has passed a resolution censuring the Sri Lankan government, yet due to striking similarities in governance style the Chinese are very supportive of it.
6. Post-war consequences
7. Latest developments

- a. Militarisation: not simply proliferation of violence, but the acceptance/normalisation of such. Even cuts in military budget not always helpful in a culture of violence and impunity.
- b. Parliament, which constitutionally has all rights over financial matters (should decide on remuneration of judges, for instance), has in reality little independent say
- c. Politician threatened "dire consequences" because didn't like ruling of a judge. Following day, 500 stormed the court house and destroyed it. To the credit of the Sri Lankan judiciary, there was a strike by judges in lower courts the following day. In higher courts, judges did not want to attend court, so yesterday unprecedented freezing of judiciary across the country. When I was young, court houses were stoned when unpopular judgements were passed, but the strike yesterday was unprecedented.
- d. We could explore the feasibility of civilian police methodologies
- e. Shooter identified but not arrested. Over 100 warrants issued for arrest of this particular individual but he surrendered himself a week later. Judge made it clear how politically connected the individual was – only the previous week he had visited others in jails and the doors were standing open for him. I will leave the experts to make further remarks on the current prison system. But prisons don't meet international standards (e.g. a few toilets only to thousands of prisoners).

The State of the Justice System

1. The (non)independence of the judiciary
2. The violence and lawlessness of the police
3. The appalling conditions of detention centres and prisons, and the brutality of the officers stationed there

The State of Laws

1. Constitution and chapter on fundamental rights: freedom from torture
2. Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)
3. Sri Lankan Parliament Act No. 22 of 1994
4. Non-implementation due to onset of war on terror and re-inflamed ethnic conflict; prosecutions of torture allegations were deemed an inhibition on law enforcement and military to carry out full-strength attacks on terrorist groups

Torture & Ill-Treatment

1. Scope
 - a. Ethnic conflict-related
 - b. Police-related
2. Challenges
 - a. Conflict is internationalised. Here I speak pragmatically, we need to insulate our system from global conflicts founded on, broadly, religious or racial intolerance

b. Police brutality – this requires increased awareness in the public of their inherent and legal-constitutional rights

c. Disempowerment of victims, particular those economically and politically marginalised

d. Cultural attitudes

i. High acceptance threshold of violence (soft factor even more difficult to deal with than hard factors, which can be thrashed out politically and legally)

ii. Non-appreciation of individual rights (Asian culture weighs collective rights > individual rights); indifference of community & fear psychosis – this is a huge mechanism for social control. I'll choose my words carefully: before the conflict, even if you drew a cartoon in the newspaper about the Commander of the Armed Forces (since imprisoned for contesting presidency), President and Minister of Defence (who will also happen to be brother to the President), there would probably be an invitation for all cartoonists to lunch with the President.

iii. Women are not treated with due respect by the police

iv. Indifference of community to the plight of individuals

v. Social control and fear cycles

vi. "Shame culture" = less open society. Lack of sympathy or association with those deemed criminal or anti-state Possible Ways Forward (experts please comment, I'm only coming from a political angle)

1. Legal

a. Strengthening the Act

b. Optional Protocol not signed, and no chance in present climate, although torture has been criminalised

2. Political

a. Mainstream issue of police brutality – will have significant acceptance from public (this will permit legislators to move more emphatically on the issue)

b. Funding – I've advocated increase in the pay of judges (something to be tackled from budgetary perspective), prison wardens and the police

3. Other practical ideas

a. Raising awareness at local and national level, amongst the population as well as among politicians

b. Educating public service departments

c. Training (for the police and prosecution)

i. Alternative prosecution methods to reduce the emphasis placed on confessions as damning evidence (this will reduce the incentive for investigators/police officers to extract a confession from the suspect through torture and other forms of ill-treatment)

ii. Building an awareness of human rights

d. Build coalitions with

i. Gathering support for human rights across the political spectrum

ii. Newer politicians who are less entrenched in their corruption/practices or resigned to existing corruption/practices, both in government and opposition (across party lines). These new ones are better educated, usually more open-minded and more optimistic.

iii. Same with police: work with younger officers who are more likely to build relationships with civil society. These newer recruits will be again more flexible and optimistic compared to those tainted by experiences of the war

iv. Supplementing local police with advice from the Attorney-General

e. Helping policemen to adjust

i. Addressing their fear of prosecution

ii. Empowering them with alternative methods and training

iii. Discouraging/rendering disadvantageous bad practice and their inevitable "cover ups"

f. Helping victims

i. Sharing experience through media and social groupings/raising public awareness

ii. Remedial or rehabilitative therapy for victims

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